

Five Things to Know About Family Law

By Jason Stoffel, Esq.

1. COPE class: This is a rule unique to Clark County, provided for in EDCR 5.07. This is the mandatory seminar for divorcing or separating parents. It must be taken within 45 days after service of the complaint. Judges are granted the discretion to compel litigants to take this class, including giving the litigant a reasonable time of around 30 days to take the class, or risk having all of your contact with the children suspended until a certificate of completion is filed with the court.

2. FMC: This is also a Clark County local rule provided for in EDCR 5.70. The Family Mediation Center, or “FMC,” is the arm of the court that makes mediation of parent/child issues mandatory with the two litigants and a court mediator. Participation is required in any case involving children to try to resolve custody. I typically fill out the Request and Order for Mediation once an Answer is filed. Placing parents in front of a mediator will reduce conflict in the case and may avoid unnecessary and expensive motion practice.

3. Alimony vs. child support: This is an easy rule to remember. The payment or receipt of child support is *not* a taxable event and therefore is *not* reported to the IRS. Alimony generally is different whereas in most cases the payer of alimony can deduct the payment on tax returns and the recipient has to declare it as reportable income. While attorneys are not tax experts, just the basic knowledge of this concept and advising clients of this issue is necessary as their advocate.

4. Nevada is a no fault state: Some attorneys and litigants forget this basic concept. The court generally doesn’t care about the affair, the lying, the gambling, etc. The emotional impact of the divorce is enough and Nevada’s grounds for divorce is typically pleaded as “incompatibility.” In other words, you don’t get more than your equal share of the marital estate because your spouse cheated on you.

5. Unequal distribution of the marital estate is allowed: While the court may not care about the gambling in a case for purposes of filing the divorce, if properly pleaded, the court may award an unequal distribution of community property so long as there is a “compelling reason to do so” under NRS 125.150(1)(b). The court must state “reasons for making the unequal disposition.”

Essentially, what this refers to in most cases is what is called “marital waste,” or using community resources for the benefit of one spouse. *See Lofgren v Lofgren*, 112 Nev. 1282, 926 P.2d 296 (1996); *Putterman v. Putterman*, 113 Nev. 606, 939 P.2d 1047 (1997). A typical example would be where there was \$50,000 in a savings account and one spouse goes on a gambling binge or supports a significant other with gifts to the tune of \$20,000, leaving \$30,000 left in the account. The court can make the specific findings that each spouse will get \$25,000 from the original \$50,000. Given that one spouse already used \$20,000, that would be subtracted from his share so that the innocent spouse would receive \$25,000 and the other spouse would get \$25,000-\$20,000, or the remaining \$5,000. There are many sad cases where the facts aren’t as easy where there is nothing left in the account and then the parties are forced into bankruptcy. The take away is there is a remedy for unequal distribution of property in Nevada, but a paper judgment is not the same as money in the bank.

In summary, it is imperative for attorneys that occasionally take a family law case to have a basic understanding of the material and Chapter Five of the Eighth Judicial District Court Rules. In child custody trials when I know the other side has not taken the COPE class, I will ask the question “what information did you get out of the COPE class?” The classic response is “what is that?” BOOM! It is all downhill from there. Or as they said on the Titanic – “ICEBERG . . . STRAIGHT AHEAD!”

Jason Stoffel, Esq. is one of the partners of Roberts Stoffel Family Law Group in Las Vegas. His area of practice for over 12 years has been in Family Law. He has proudly served on the Executive Board of the Clark County Bar Association for several years.

